

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

ANDREW C. SIMPSON,

PLAINTIFF,

V.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION,**

DEFENDANT.

CIV. NO. 1:13-CV-98

COMPLAINT

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552, for injunctive and other appropriate relief and seeking the disclosure and release of agency records improperly withheld from plaintiff by defendant Department of Transportation (“DOT”) and its component, the Maritime Administration (“MarAd”).

JURISDICTION AND VENUE

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B).
3. Plaintiff Andrew C. Simpson is a citizen and resident of the U.S. Virgin Islands

with his residence on St. Croix. He graduated from the U.S. Merchant Marine Academy (“USMMA”) at Kings Point, NY in 1982.

4. Defendant DOT is a Department of the Executive Branch of the United States Government, and includes component entities MarAd and the USMMA. The DOT is an agency within the meaning of 5 U.S.C. § 552(f).

FACTUAL BACKGROUND

5. On April 30, 2013, Plaintiff submitted two separate Freedom of Information Act (“FOIA”) requests to DOT. True copies of those requests are attached as Exhibit A to this complaint.
6. Plaintiff requested records related to a specific modification to MarAd’s website and records related to various actions taken by the DOT and/or MarAd with respect to the USMMA.
7. On May 24, 2013, MarAd responded via email to Plaintiff’s requests and requested additional information regarding the maximum amount of fees that Plaintiff was willing to pay to obtain the records pursuant to 49 CFR §7.14(c)(2).
8. Plaintiff responded to MarAd’s request via email on May 24, 2013 with the amounts he was willing to pay.
9. On June 6, 2013, MarAd informed Plaintiff that it would not be able to respond to Plaintiff’s requests within the twenty business day deadline set by law and inquired whether Plaintiff would be willing to modify his request in some fashion. MarAd did not provide Plaintiff with the “date on which a determination [was] expected to be dispatched” as required by 49 CFR §7.33.

10. In its June 6, 2013 letter, MarAd further described the date of Plaintiff's FOIA request as May 24, 2013 rather than April 30, 2013 – indicating that it calculated the deadline for replying to the request from May 24, 2013 rather than April 30, 2013.
11. On information and belief, MarAd used the May 24, 2013 letter as the date for calculating deadlines because the initial FOIA requests did not include the amount that Plaintiff was willing to pay for the documents.
12. The applicable federal regulations do not allow MarAd to use Plaintiff's omission of the amount he was willing to pay as a basis for delaying the start date for calculating the date when a response to a FOIA request is due. *See* 49 CFR §7.14(b) (specifying that only the omission of the required information listed in 49 CFR §7.14(a) is a basis for delaying the date for calculating a response deadline.)
13. MarAd's responses to the FOIA requests were due on May 29, 2013; with the available statutory 10 business day extension, MarAd's responses were due on June 12, 2013.
14. On June 6, 2013, Plaintiff replied to MarAd's request for modification by asking what the expected date of production would be. MarAd replied that it would respond "as quickly as possible."
15. Because MarAd failed to provide the "the date on which a determination is expected to be dispatched" as required by 49 CFR 7.33(a), it was not entitled to any extension beyond June 12, 2013.

16. To date, Defendant has not provided the records requested by Plaintiff despite follow-up requests to MarAd

CAUSE OF ACTION

17. The facts set forth above establish a violation of the Freedom of Information Act and the Defendant's own regulations.
18. Plaintiff has exhausted the applicable administrative remedies with respect to each FOIA request. 5 U.S.C. § 552(a)(6)(C)(I).
19. The Defendant has wrongfully withheld the requested records from Plaintiff.

REQUESTED RELIEF

Wherefore, Plaintiff prays that this Court:

1. Order Defendant to disclose the requested records in their entirety and make copies available to Plaintiff;
2. Provide for expeditious proceedings in this action;
3. Award Plaintiff its costs incurred in this action; and
4. Grant such other relief as the Court may deem just and proper.

Respectfully submitted,

ANDREW C. SIMPSON, P.C.
Attorneys for Plaintiff

Dated: October 11, 2013

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